In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
C. T. DOREMUS. } No. 877.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

W. S. WEBB AND JACOB GOLDBAUM,
v.
THE UNITED STATES OF AMERICA. } No. 883.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and in accordance with the provisions of the Criminal Appeals Act, 34 Stat. 1246, moves to advance No. 877 for hearing on a day convenient to the court.

Because of the similarity of the propositions involved in No. 877 to those presented in No. 883, the Solicitor General also moves for the advancement of the latter case and requests that both cases be assigned for joint hearing.

In No. 877, plaintiff in error, a practicing physician who had been duly registered and paid the tax as required by the so-called "Harrison Antinarcotic Act," 38 Stat. 785, was indicted in the District

Court of the United States for the Western District of Texas, among other things—

1. For having sold a quantity of heroin to a certain person not in pursuance of a written order, in violation of section 2 of said act which provides *inter alia* that:

> It shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs *except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue.* [Italics mine.]

2. For having sold and dispensed to a certain person alleged to be an habitual drug fiend a quantity of heroin, not in the course of his professional practice nor for the treatment of any disease from which the said fiend was suffering but merely to gratify the latter's desire for the drug, in violation of paragraph (a) of section 2 of said act which provides *inter alia* that nothing contained in the section shall apply—

> To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician * * * registered under this act *in the course of his professional practice only.* * * * [Italics mine.]

A demurrer to the indictment was sustained, the District Court holding that the acts of the plaintiff in error charged in the indictment in the words of the statute are matters of police regulation which do not tend to render effectual the prime object of the act—revenue—and which are reserved to the States, and

to the extent that the act prohibits the same, it is unconstitutional and in violation of the Tenth Amendment to the Constitution.

In No. 883, Webb and Goldbaum were convicted in the District Court of the United States for the Western District of Tennessee of a conspiracy to commit an offense against the United States, to wit, to violate the "Harrison Antinarcotic Act," in violation of section 37 of the Criminal Code. The facts may be succinctly stated as follows:

Webb was a practicing physician and Goldbaum a retail druggist. Both were duly registered and had paid the tax as required by the provisions of the act. It was Webb's custom to prescribe morphine to habitual users upon their application to him therefor. Goldbaum was familiar with this practice and constantly filled the prescriptions. Goldbaum was provided with the blank forms contemplated by section 2 of the act and by use thereof had obtained copious quantities of morphine from wholesale dealers. It was agreed and understood by Webb and Goldbaum that the latter should, by the use of these forms, procure a stock of morphine, which he should and would sell to those who desired to purchase and who came provided with Webb's so-called prescriptions. It was the intent of both that morphine should be thus furnished by Goldbaum to habitual users thereof, but without any physician's prescription issued in the course of a "good faith" attempt to cure the morphine habit.

A writ of error to the judgment of conviction was sued out from the Circuit Court of Appeals for the Sixth Circuit, which has certified to this court the following questions:

"1. Does the first sentence of section 2 of the Harrison Act prohibit retail sales of morphine by druggists to persons who have no physician's prescription, who have no order blank therefor and who can not obtain an order blank because not of the class to which such blanks are allowed to be issued?

"2. If the answer to question one is in the affirmative, does this construction make unconstitutional the prohibition of such sale?

"3. If a practicing and registered physician issues an order for morphine to an habitual user thereof, the order not being issued by him in the course of professional treatment in the attempted cure of the habit, but being used for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use, is such order a physician's prescription under exception (*b*) of section 2?"

These cases are of importance to the Government in the enforcement of the "Harrison Act" and for that reason an early determination thereof by this court is desirable.

Notice of this motion has been served on opposing counsel in both cases.

JOHN W. DAVIS,
Solicitor General.

APRIL, 1918.